

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 8:075. Consumer confidence reports.

6 RELATES TO: KRS 224.10-100, 224.10-110, 141.151-141.155, 42 U.S.C. 300f-300j-26, EO  
7 2008-507, 2008-531

8 STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.151-  
9 141.155, 42 U.S.C. 300f through 300j-26

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS [~~224.10-100(30)~~ and] 224.10-  
11 110(2) and (3) authorize the Secretary of the Cabinet to promulgate administrative regulations  
12 for the regulation and control of the purification of water for public and semipublic use. EO  
13 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public  
14 Protection Cabinet and establish the new Energy and Environment [~~Environment~~] Cabinet. This  
15 administrative regulation establishes the requirements for consumer confidence reports. This  
16 administrative regulation establishes requirements different from the federal regulation for  
17 submitting reports and certifications to the cabinet in enforceable timeframes. The federal  
18 regulation requires reports to be mailed to the cabinet at the same time the report is delivered to  
19 the customers, and the certification is required to be submitted to the cabinet within three (3)  
20 months. This administrative regulation requires the report and certification to be received by the  
21 cabinet within fourteen (14) days of delivery to the customer.

1       Section 1. (1) A community water system shall submit an annual consumer confidence report  
2 to its customers and to the cabinet in accordance with 40 C.F.R. 141 Subpart O, 141.151,  
3 141.152, 141.153, and 141.155, including Appendix A, and 141.154, ~~[effective July 1, 2007,]~~  
4 except as provided in subsection (2) of this section.

5       (2) A copy of the annual report and certification required by 40 C.F.R. 141.155 ~~[, effective~~  
6 ~~July 1, 2007,]~~ shall be delivered to the cabinet:

7       (a) Not later than fourteen (14) days after the date a community water system is required by  
8 40 C.F.R. 141.155(c) ~~[, effective July 1, 2007,]~~ to deliver the report to the system's customers; or

9       (b) Not later than fourteen (14) days of publication if a system serving fewer than 10,000  
10 persons is publishing the report in a local newspaper in accordance with 40 C.F.R. 141.155(g) ~~[,~~  
11 ~~effective July 1, 2007]~~.

401 KAR 8:075, “Consumer Confidence Reports” approved for promulgation:

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Date

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Henry “Hank” List, Deputy Secretary, FOR  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 16, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator  
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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 8:075

Contact Person: Peter T. Goodmann, Assistant Director

**(1) Provide a brief summary of:**

- (a) What this administrative regulation does:** This administrative regulation requires public water systems to annually report to its customers information on the quality and nature of the water the system is delivering to the customers and on the public water system's compliance with national primary drinking water regulations established pursuant to the Safe Drinking Water Act.
- (b) The necessity of this administrative regulation:** Reports to the public allow public water systems to keep their customers informed of issues relevant to the water system's operation.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** Consumer confidence reports allow consumers to stay abreast of issues pertaining to their drinking water.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

- (a) How the amendment will change this existing administrative regulation:** This amendment updates a federal citation, 40 C.F.R. 141.154.
- (b) The necessity of the amendment to this administrative regulation:** The additional federal regulation was omitted in the previous revision and is necessary for the state to obtain primacy for the drinking water program.
- (c) How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-100 and 224.10-110 authorize the Cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The amendment to this administrative regulation is necessary for the state to obtain primacy from EPA to enforce these regulations.
- (d) How the amendment will assist in the effective administration of the statutes:** The additional federal regulation clarifies that reports on drinking water must contain federally mandated language pertaining to health information.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** This regulation applies to 491 public water systems.

**(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

- (a) List the actions that each of the regulated entities identified in question (3) will have to**

**take to comply with this administrative regulation or amendment:** The amendment clarifies that the effected entities must comply with 40 C.F.R. 141.154, which requires reporting to include health information.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** The costs of complying with this administrative regulation remain unchanged.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** Public water systems will benefit by being in compliance with federal requirements.

**(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

**(a) Initially:** Costs of implementation will remain the same.

**(b) On a continuing basis:** Costs of implementation will remain the same.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?** The drinking water program is funded by federal funds provided to administer the requirements of the Safe Drinking Water Act.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** An increase in fees will not be necessary.

**(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:** This administrative regulation does not establish fees or directly or indirectly increase fees.

**(9) TIERING: Is tiering applied? (Explain why or why not)**

Yes. This administrative regulation differs in requirements for community water systems, non-community water systems, transient non-community water systems, and for systems of different size, as required by the federal regulation.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

**Regulation #:** 401 KAR 8:075

**Contact Person:** Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes   X        No       

**If yes, complete questions 2-4.**

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation applies to public water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.** KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 42 U.S.C. 300f through 300j-26 requires the establishment of national primary drinking water regulations. 40 CFR 141 Subpart O, 141.151 through 141.155, including Appendix A, requires public water systems to annually report to its customers information on the quality and nature of the water the system is delivering to the customer and on the public water system's compliance with national primary drinking water regulations

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?** This administrative regulation will not generate any revenue for local governments for the first year.

- (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?** This administrative regulation will not generate any revenue for local governments in subsequent years.

- (c) How much will it cost to administer this program for the first year?** The amendments to this administrative regulation will not impose any additional cost for the first year.

- (d) How much will it cost to administer this program for subsequent years?** The amendments to this administrative regulation will not impose any additional cost in subsequent years.

**Note:** If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

**Revenues (+/-):**

**Expenditures (+/-):**

**Other Explanation:**

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 8:075

Contact Person: Peter T. Goodman, Assistant Director

**1. Federal statute or regulation constituting the federal mandate.**

42 U.S.C. Chapter 6A, Subchapter XII, The Safe Drinking Water Act, and 40 CFR 141 Subpart O, Sections 141.151 through 141.155, including Appendix A

**2. State compliance standards.**

KRS 224.10-100, 224.10-110

**3. Minimum or uniform standards contained in the federal mandate.**

42 U.S.C. Chapter 6A, Subchapter XII, The Safe Drinking Water Act, and 40 CFR 141 Subpart O, Sections 141.151 through 141.155, including Appendix A, requires public water systems to annually report to its customers information on the quality and nature of the water the system is delivering to the customer and on the public water system's compliance with national primary drinking water regulations established pursuant to the Safe Drinking Water Act.

**4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?**

The amendment to this regulation does not introduce any requirements more stringent than the federal regulation. However, the existing regulation does contain a requirement that differs from the federal regulation, and that requirement is not changing. The federal regulation requires that a copy of the consumer confidence report be "mailed" to the cabinet at the same time that the report is delivered to the water system's consumers. A certification that information in the report is correct must be submitted to the cabinet within three months. This regulation requires that both the report and the certification shall be received by the cabinet within 14 days after the report is delivered to the customers.

**5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.**

40 C.F.R. 141.155(c) requires public water systems to mail the consumer confidence report to the primacy agency at the same time as the public water system delivers the report to its customers, and requires certification of the reports accuracy within three months of that time. This administrative regulation requires that the cabinet receive the report within fourteen days of the report being delivered to the water system's customers. Since the certification simply is a statement that the report is accurate, which they are required to be, the cabinet considers the requirement that the certification be received in the same time period to be reasonable.